

In the United States Patent and Trademark Office

Applicant(s) Douglas B. Wilson
Serial No. 10/720,821
Filed 11/24/2003
Title FATIGUE RELIEVING SUPPORT FOR STEERING
 WHEELS AND THE LIKE
Examiner Vinh Luong
Unit 3682

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. §41.37

SIR:

This is an Appeal Brief pursuant to the Notice of Appeal filed May 20, 2010 appealing the rejection of claims 20-28 and 39 in the Office Action dated May 13, 2010 ("Second Appeal").

I. REAL PARTY IN INTEREST

The real party in interest is Douglas B. Wilson, 20 Nichols Road, Cohasset, MA 02025, Applicant/Appellant.

II. RELATED APPEALS AND INTERFERENCES

Appellant has filed a second appeal with regard to U.S. Patent Application Ser. No. 10/727,306 filed December 3, 2003 (U.S. Pub. No. 2004/0255713) ("the '306 Application"),

on even date. The '306 Application is a continuation-in-part of the present application. A number of issues to be decided in the second appeal with regard to the '306 Application are the same or similar to the issues to be decided in this Second Appeal. Therefore, the decisions in the second appeal related to the '306 Application would directly affect or have a bearing on the Board's decision in this Second Appeal.

III. STATUS OF THE CLAIMS

Claims 20-28 and 39 are pending in the present application and presented on appeal. Claims 1-19 and 29-38 were cancelled in Appellant's Amendment dated September 26, 2005 ("September 26, 2005 Amendment"). Appellant in an Amendment/Response dated February 24, 2010 ("February 24, 2010 Amendment") added "(New) Claim 29," which should have been numbered "(New) Claim 39." In a second Amendment After Final Action dated June 7, 2010 ("June 7, 2010 Amendment"),¹ Appellant cancelled claim 29 added by the February 24, 2010 Amendment and added "(New) claim 39" to correct the claim misnumbering issue.

Claims 20-28 and 29 (now claim 39) have been rejected twice under 35 U.S.C. §102 for anticipation based on JP_H04-78769 to Shigeru ("Shigeru"); claims 20-26 have been rejected twice under the judicially-created doctrine of obviousness-type double patenting based on claims 14-17, 24, and 27 of Appellant's later-filed co-pending application, the '306 Application, which is a continuation-in-part application of the present application; and claims 27 and 28 have been rejected twice under the judicially-created doctrine of obviousness-type double patenting based on claims 18 and 19/18 of Appellant's later-filed co-pending application, the '306 Application, which is a continuation-in-part application of the present application. These rejections to claims 20-28 and 29 (now claim 39) are being appealed in this Second Appeal.

IV. STATUS OF AMENDMENTS

Claims 1-19 were the original application claims as filed. Claims 20-28, along with now cancelled claims 29-38, were added to the present application in the Amendment dated May 11, 2005 ("May 11, 2005 Amendment"). The Examiner responded to the May 11, 2005 Amendment by issuing a restriction requirement in the Office Action dated May 27, 2005 ("May 27, 2005 Office Action"). In Appellant's Response dated July 22, 2005 ("July 22, 2005 Response"), he selected claims 1-9, 16/6, 17/1, 18/1, 20-27, 28/20, and 28/27 as the species to prosecute in the

¹ Attached as Attachment I to the Evidence Appendix.

present application. These claims were directed to the species the Examiner indicated were shown in Figures 1, 3, and 4 of the present application.

Appellant and the Undersigned conducted an in-person interview with the Examiner on September 20, 2005 ("September 20, 2005 Interview"). Following the September 20, 2005 Interview, Appellant filed the September 26, 2005 Amendment. In the September 26, 2005 Amendment, Appellant cancelled claims 1-19 and 29-38, leaving only claims 20-28 pending in the present application.² Appellant also amended claim 20 as agreed in the September 20, 2005 Interview to overcome a 35 U.S.C. §112, second paragraph, indefiniteness rejection.

Claims 20-28 were rejected by the Examiner in the Office Action dated October 18, 2005 ("October 18, 2005 Office Action"). In the Response filed November 3, 2005 ("November 3, 2005 Response"), Appellant first amended pending claim 20 to overcome the Examiner's bases for his anticipation rejection.

Appellant filed a Request for Continued Examination ("RCE") on November 25, 2005. On December 2, 2005, Appellant filed a Supplemental Response to the RCE filed on November 25, 2005. In the Supplemental Response, Appellant repeated his amendment to claim 20 to overcome the Examiner's bases for rejecting claims 20-28 for anticipation. There were no further amendments to claims 20-28 before the First Appeal was heard by the Board of Patent Appeals and Interferences ("Board") on August 13, 2009.

In the Office Action dated January 13, 2006 ("January 13, 2006 Office Action"), the Examiner issued a first rejection of claims 20-28 as presented in the RCE. In the Response dated April 4, 2006 ("April 4, 2006 Response"), Appellant addressed the Examiner's bases for rejecting amended claims 20-28 without further amendment to claims 20-28. In the Office Action dated May 9, 2006 ("May 9, 2006 Office Action"), the Examiner issued a second rejection of claims 20-28. Appellant filed a Notice of Appeal on May 31, 2006.

As stated, the Board heard the First Appeal on August 13, 2009 and rendered its decision on August 31, 2009 ("Decision").³ In the Decision, the Board reversed the Examiner's rejection of claims 20-26 and 28/20 for anticipation based on U.S. Patent No. 2,118,540 to Van Arsdel ("Van Arsdel") and the rejection of claims 20, 27, 28/20, and 28/27 for anticipation based on

² Claim 28 was a multiple dependent claim that depended from claims 20 or 27.

³ Attached as Attachment A to the Evidence Appendix.

U.S. Patent No. 1,575,848 to Laubach (“Laubach”), but affirmed the rejection of claims 20-26 and 28/20 for anticipation based on U.S. Patent No. 2,134,020 to Anson (“Anson”).

Appellant filed a second RCE on September 24, 2009. On the same date, Appellant filed an Amendment (“September 24, 2009 Amendment”)⁴ in which independent claim 20 and dependent claim 22 were amended to recite that the fatigue relieving/preventing apparatus of the present invention provided “resting support.” Claim 27, which is directed to providing a plurality of supports on the periphery of the steering wheel, was rewritten in independent form. Claim 27, as amended, also included that the fatigue relieving/preventing apparatus of the present invention provided “resting support.” Lastly, claim 28, which depends from claim 27, was amended to make it consistent with claim 27.

Appellant’s amendment of independent claims 20 and 27 to recite that the fatigue relieving/preventing apparatus provided “resting support” was consistent with the Board’s statements at the Oral Hearing of features that distinguished the claims on appeal over the Anson reference, which was the only remaining reference being relied on by the Examiner in rejecting the pending claims. (Oral Hearing Transcript dated August 13, 2009 at pages 14-16)⁵

In an Office Action dated November 20, 2009 (“November 20, 2009 Office Action”)⁶ that responded to Appellant’s September 24, 2009 Amendment, the Examiner objected to the Specification for failing to provide a proper antecedent basis for certain claimed subject matter; rejected claim 28/20 under 35 U.S.C. §112, second paragraph, as being indefinite for allegedly having an insufficient antecedent basis in the Specification for certain limitations in the claims; rejected claims 20-26 and 28/20 for anticipation based on Anson; rejected claims 27 and 28/27 under 35 U.S.C. §103 for obviousness based on Anson taken with or without U.S. Pub. No. 2002/0162416 to Gemma (“Gemma”); rejected claims 20, 27, and 28/27 for anticipation based on Gemma; rejected claims 20 for anticipation based on U.S. Patent No. 5,207,713 to Park (“Park”); rejected claims 20-26 and 28/20 under the judicially-created doctrine of obviousness-type double patenting based on claims 14-17, 24, and 27 of the ‘306 Application; and rejected claims 27 and 28/27 under the judicially-created doctrine of obviousness-type double patenting based on claims 18 and 19/18 of the ‘306 Application.

⁴ Attached as Attachment B to the Evidence Appendix.

⁵ Attached as Attachment C to the Evidence Appendix.

⁶ Attached as Attachment D to the Evidence Appendix.

In response to the November 20, 2009 Office Action, Appellant filed an Amendment/Response dated February 24, 2010 ("February 24, 2010 Amendment").⁷ In this Amendment, Appellant amended independent claims 20 and 27 to recite that the fatigue relieving/preventing apparatus was disposed on "an upper one-half (1/2)" of the periphery of the steering wheel. Appellant amended claim 28 to recite its dependency was only from independent claim 27 rather than the multiple dependency from claims 20 and 27. Further, Appellant added claim 29 (now claim 39) that recited the subject matter of claim 28 but depended only from claim 20.

In an Office Action dated May 13, 2010 ("May 13, 2010 Office Action")⁸ that responded to Appellant's February 24, 2010 Amendment, the Examiner withdrew the objection to the Specification and rejection under 35 U.S.C. §112, second paragraph, and the anticipation and obviousness rejections based on Anson, Gemma, and Park taken alone or in combination. Also in the May 13, 2010 Office Action, the Examiner objected to the Specification for failing to provide a proper antecedent basis for "an upper one-half (1/2)" in claims 20 and 27; finally rejected claims 20-28 and 29 (now claim 39) for anticipation based on Shigeru; finally rejected claims 20-26 and 28/20 under the judicially-created doctrine of obviousness-type double patenting based on claims 14-17, 24, and 27 of the '306 Application; and finally rejected claims 27 and 28/27 under the judicially-created doctrine of obviousness-type double patenting based on claims 18 and 19/18 of the '306 Application. The Examiner stated that the final rejections of the claims 20-28 and 29 (now claim 39) for anticipation based on the newly-cited Shigeru reference were necessitated by Appellant's amendment of the claims.⁹

Appellant filed an Amendment After Final Action dated May 20, 2010 ("May 20, 2010 Amendment")¹⁰ to respond to the Examiner's May 13, 2010 Office Action. In the May 20, 2010 Amendment, Appellant amended Specification to traverse the Examiner's objection raised in the May 13, 2010 Office Action but did not make any further amendments to the claims. Appellant filed a Second Notice of Appeal on May 20, 2010.

⁷ Attached as Attachment E to the Evidence Appendix.

⁸ Attached as Attachment F to the Evidence Appendix.

⁹ Shigeru was brought to the Examiner's attention in Appellant's IDS filed January 11, 2010. Shigeru was one of the references brought to Appellant's attention in a foreign counterpart application and filed within two months of this reference being brought to Appellant's attention in such foreign counterpart application.

¹⁰ Attached as Attachment G to the Evidence Appendix.

In an Advisory Action Before the Filing of an Appeal Brief dated May 27, 2010 (May 27, 2010 Advisory Action),¹¹ the Examiner entered the May 20, 2010 Amendment for purposes of this Second Appeal. In the May 27, 2010 Advisory Action, the Examiner maintained the anticipation rejection raised against the pending claims based on Shigeru and the two obviousness-type double patenting rejections based on the '306 Application.

Appellant, through his counsel of record, the Undersigned, conducted a telephonic interview with the Examiner on June 7, 2010 ("June 7, 2010 Interview") regarding the correction of claim numbering with respect to "(New) Claim 29" added by Appellant in the February 24, 2010 Amendment. In the June 7, 2010 Interview, the Undersigned and the Examiner agreed Appellant would file an amendment to correct claim misnumbering. In compliance with this agreement, Appellant filed the June 7, 2010 Amendment that canceled "(New) Claim 29" and added "(New) Claim 39." The claimed subject matter of "(New) Claim 39" is the same as cancelled "(New) Claim 29."

In a second Advisory Action Before the Filing of an Appeal Brief dated June 14, 2010 ("June 14, 2010 Advisory Action"),¹² the Examiner entered the June 7, 2010 Amendment for purposes of this Second Appeal. In the June 14, 2010 Advisory Action, the Examiner stated that claim 39 was rejected on the same grounds as misnumbered claim 29.

Claims 20-28 and 39 are hereby presented in this Second Appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 20-28 and 39 are presented in this Second Appeal. Of the pending claims, claims 20 and 27 are independent claims. Claims 21-26 and 39 depend directly or indirectly from claim 20, and claim 28 depends directly from claim 27.

The present invention is directed to a novel system and method that are associated with a steering wheel for relieving or preventing fatigue when driving a vehicle for extended periods of time. The system will at least provide resting support for a portion of the driver's body, such as wrists, to relieve or prevent fatigue. (Figure 3; Specification: Page 2, lines 5-10 (paragraph

¹¹ Attached as Attachment H to the Evidence Appendix.

¹² Attached as Attachment J to the Evidence Appendix.

[0007]); Page 3, lines 1-2 (paragraph [0013]); Page 4, line 29 to Page 5, line 4 (paragraph [0026]); Page 5, line 25 to Page 6, line 6 (paragraph [0029]))¹³.

Claim 20 recites a fatigue relieving/preventing apparatus that has two sections and provides resting support (Figure 3; Specification: Page 3, lines 1-2 (paragraph [0013]); Page 4, line 29 to Page 5, Line 4, (paragraph [0026]); Page 5, line 25 to Page 6, line 6 (paragraph [0029])) and disposed on the upper one-half (1/2) of a steering wheel (Figures 1 and 2; May 20, 2010 Amendment¹⁴).¹⁵ According to claim 20, the first section connects to the periphery of the steering wheel. (Figure 3; Specification: Page 3, lines 1-2 (paragraph [0013]); Page 3, lines 18-23 (paragraph [0017]); Page 4, line 29 to Page 5, line 7 (paragraphs [0026]-[0027]); Page 5, line 25 to Page 6, line 6 (paragraph [0029])) The second section connects to, and extends outward from, the first section at an angle to a plane across the face of the steering wheel. The second section may be made from a deformable material that will support, for example, the driver's wrists, as long as the pressure on the second section is less than the pressure necessary to deform it. However, when greater than the deforming pressure is applied to the second section, such as in an emergency, this section will deform out of the interference with the driver's ability to grab the steering wheel. (Figures 1, 2, 3, 4; Specification: Page 3, lines 18-29 (paragraphs [0017]-[0018]); Page 4, lines 4-16 (paragraphs [0021]-[0023]); Page 5, lines 5-24 (paragraphs [0027]-[0028]))

Claims 21-26 and 39 add further limitations to claim 20. Claim 21 adds that the second section is deformable in at least one direction when deforming pressure is applied to it. (Figure 4; Specification: Page 5, lines 5-18 (paragraph [0027])) Claim 22 adds that the second section supports a body portion, such as the wrist, when pressure is applied in at least one direction. (Figure 3; Specification: Page 4, line 29 to Page 5, line 7 (paragraphs [0026]-[0027])) Claim 23 adds that the steering wheel may control nautical vessels, aircraft, or ground transportation vehicles. (Specification: Page 2, lines 17-20 (paragraph [0009]); Page 7, original claim 4) Claim 24 adds that the second section will return to its original position once the deforming pressure is removed. As such, it has memory. (Specification: Page 5, lines 19-24

¹³ Citations to numbered paragraphs are from the published version of the present application at U.S. Pub. No. 2004/0129108, which is attached as Attachment K to the Evidence Appendix.

¹⁴ In the May 20, 2010 Amendment, Appellant added disclosure to the Specification that clarified the invention as shown in Figures 1 and 2 was disposed on the upper one-half (1/2) of the steering wheel.

¹⁵ The Claims Appendix contains a full version of amended claim 20.

(paragraph [0028])) Claim 25 adds that the second section can support the forearm, wrist, or hand. (Specification: Page 5, lines 1-4 (paragraph [0026]); Page 7, original claim 6) Claim 26 adds that the first section extends a predetermined length of the periphery of the steering wheel (Figures 1 and 2; Specification: Page 3, lines 18-29 (paragraphs [0018]-[0019]); Page 4, lines 22-28 (paragraph [0025]); Page 7, original claim 7) Claim 39 adds that the first section may be deformable. (Specification: Page 3, lines 18-22 (paragraph [0018]))

Claim 27 recites a fatigue relieving/preventing apparatus that has two sections and provides resting support. (Figure 3; Specification: Page 3, lines 1-2 (paragraph [0013]); Page 4, line 29 to Page 5, line 4 (paragraph [0026]); Page 5, line 25 to Page 6, line 6 (paragraph [0029])) and disposed on the upper one-half (1/2) of a steering wheel (Figures 1 and 2; May 20, 2010 Amendment).¹⁶ Further, Claim 27 recites that there are at least two fatigue relieving/preventing supports attached to the steering wheel. (Figure 2; Specification: Page 4, lines 4-22 (paragraphs [0021]-[0024])) The first section connects to the periphery of the steering wheel (Figure 2; Specification: Page 4, lines 8-16 (paragraphs [0022]-[0023])) The second section of each support connects to, and extends outward from, a first section at an angle to a plane across the face of the steering wheel. The second section may be made from a deformable material that will support, for example, the driver's wrists, as long as the pressure on the second section is less than the pressure necessary to deform it. However, when greater than the deforming pressure is applied to the second section, such as in an emergency, this section will deform out of the interference with the driver's ability to grab the steering wheel. (Figure 2; Specification: Page 4, lines 8-21 (paragraphs [0022]-[0024]); Page 5, lines 5-24 (paragraphs [0027]-[0028])) Claim 28 adds that the first section may be deformable. (Specification: Page 4, lines 8-16 (paragraphs [0022]-[0023]))

A significant aspect of the present invention is that the second section will deform out of interference with the operation of the steering wheel if it is grabbed in an emergency. This is shown graphically in Figure 4. The result is a novel apparatus that relieves or prevents fatigue when driving for extended periods of time but does not prevent the driver from grabbing the wheel in emergencies.

¹⁶ The Claims Appendix contains a full version of amended claim 27.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 20-28 and 29 (now claim 39) were first rejected in the November 20, 2009 Office Action.¹⁷ In that Office Action, the Examiner rejected claims 20-28 and 29 (now claim 39) on the following bases:

- A. Claims 20-26 and 28/20 under 35 U.S.C. §102(b) for allegedly being anticipated by Anson;
- B. Claims 27 and 28/27 under 35 U.S.C. §103(a) for allegedly being rendered obvious by Anson taken with or without Gemma;
- C. Claims 20, 27, and 28/27 under 35 U.S.C. §102(e) for allegedly being anticipated by Gemma;
- D. Claim 20 under U.S.C. §102(b) for allegedly being anticipated by Park;
- E. Claims 20-26 and 28/20 (now claim 39) under the judicially-created doctrine of obviousness-type double patenting for allegedly being unpatentable over claims 14-17, 24, and 27 of the '306 Application (co-pending with the present application); and
- F. Claims 27 and 28/27 under the judicially-created doctrine of obviousness-type double patenting for allegedly being unpatentable over claims 18 and 19/18 of the '306 Application (co-pending with the present application).

The Examiner issued a second rejection of claims 20-28 and 29 (now claim 39) in the May 13, 2010 Office Action. In that Office Action, the Examiner rejected the claims 20-28 and 29 (now claim 39) on the following bases:

- A. Claims 20-28 and 29 (now claim 39) under 35 U.S.C. §102(b) for allegedly being anticipated by Shigeru;
- B. Claims 20-26 under the judicially-created doctrine of obviousness-type double patenting for allegedly being unpatentable over claims 14-17, 24, and 27 of the '306 Application (co-pending with the present application); and

¹⁷ At the time the November 20, 2009 Office Action issued, claim 28 was a multiple dependent claim that depended from claims 20 and 27. In Appellant's February 24, 2010 Amendment, claim 28 was amended so that it only depended from claim 27. The February 24, 2010 Amendment added "(New) Claim 29," which included the subject matter of claim 28 but depended only from claim 20. In the June 7, 2010 Amendment, claim 29 was cancelled and claim 39 added to replace it to correct the claim misnumbering issue.

C. Claims 27 and 28 under the judicially-created doctrine of obviousness-type double patenting for allegedly being unpatentable over claims 18 and 19/18 of the '306 Application (co-pending with the present application).

Appellant requests that the Board review on appeal and reverse the Examiner's bases for rejecting on the pending claims as set forth in the May 13, 2010 Office Action.

A copy of pending claims 20-28 and 39 is attached as the Claims Appendix. Appellant also has attached an Evidence Appendix.

VII. ARGUMENT

A. Anticipation Rejection

1. Anticipation: Legal Standard

The Examiner has rejected claims 20-28 and 29 (now claim 39) under 35 U.S.C. §102(b) for anticipation based Shigeru. The standard for sustaining a rejection for anticipation is a single prior art reference must disclose each and every limitation of the claim. *See, e.g., Schering Corp. v. Geneva Pharma., Inc.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003) (“[a] patent [claim] is invalid for anticipation if a single prior art reference discloses each and every limitation of the claimed invention”); *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001) (“[t]o anticipate, every limitation of the claimed invention must be found in a single prior art reference, arranged as in a claim”); *Kloster Speedsteel AB v. Crucible, Inc.*, 794 F.2d 1565, 1571 (Fed. Cir. 1986) (“absent from the reference of any claimed element negates anticipation”). Shigeru does not meet this standard.

2. Shigeru Does Not Anticipate Claims 20-28 and 29 (Now Claim 39)

Examiner rejected claims 20-28 and 29 (now claim 39) under 35 U.S.C. §102(b) for anticipation based on Shigeru. The Examiner provided a translation of Shigeru along with a marked-up version of the drawings of this reference with the May 13, 2010 Office Action. The Examiner has relied on four pages of the translation and a marked-up version of the drawings to support the anticipation rejection raised against claims 20-28 and 29 (now claim 39). Appellant submits that Shigeru (1) teaches away from the present invention and (2) does not anticipate the present invention as the Examiner contends. As such, the anticipation rejection based on Shigeru should be reversed.

A review of the Shigeru translation and marked-up drawings show this reference teaches a support 1 that extends outward from the outer peripheral edge of a steering wheel parallel to a plane across the face of steering wheel. For safety reasons, support 1 is shaped and positioned so that it has no portions extending outward from a plane across the face of the steering wheel toward the driver; however, since support 1 is wider than the steering wheel, a portion of its width protrudes behind the plane across the back of the steering wheel.

The support 1 is constructed of rigid, lightweight molded plastic. The rigid understructure is covered with a layer of cushion material. The surface of the cushion material is then covered with cloth or leather to reduce hand slippage. The driver's hands are positioned on the top of each support 1 at the outside perimeter of the steering wheel.

Each support 1 is fixedly attached to metal grooves cut in the outside periphery (perimeter) of the steering wheel. A latching mechanism extends through each support 1 so that when the support is positioned in the desired location along a metal groove, the latching mechanism is tightened to lock or fix the support in place. Once the support is fixed or locked in place, it does not move until the latching mechanism is released to unlock it. In a second embodiment, instead of the groove in the steering wheel being used to lock or fix the support in place, each support is locked or fixed in place with a lever or nut using a band or U-shaped metal fitting, respectively. In each case, the support is locked or fixed in place, and in order to move it, the support must be unlocked or unfixed, moved, and then refixed or relocked such that it is again fixed or locked to the steering wheel at the new location.

According to Shigeru, the underlying molded plastic structure of support 1 is made from a lightweight plastic. This lightweight plastic is a rigid material. In order to protect a driver from contacting this rigid structure in an accident, the support is specifically placed such that the driver would come in contact with the steering wheel before the support. To the extent that the driver comes in contact with the support during normal use, the driver would contact the cloth or leather covering the cushion material, which reduces hand slippage. The following from pages 2-4 of the Shigeru translation supports Appellant's understanding of Shigeru:

II. Scope of the Patent Claims

1. An invention of support 1 wherein support 1 can be moved along a fixing groove of steering wheel 2 and fixed to a free place by the action of lever 5 and metal fitting 6 to make the hands stable by fixing support 1 to the outer periphery of steering wheel 2 and reduce fatigue of driver's hands.

2. A support 1 [is] fixed to steering wheel 2 with band 11 or U-shaped metal fitting 12 wherein a fixing groove 3 of the steering wheel is not needed to fasten support 1 from the outside of steering wheel 2.

III. Detailed Description of the Invention

Groove 3 for metal fitting 6 is cut in a conventional steering wheel, *metal fitting 6 of support 1 is fit into it in order to slide support 1 along the outer periphery of the steering wheel, and lever 5 is set into groove 7 of the support at the most preferable position of the driver's hands. When a driver wants to change the position, he/she can pull lever 5 horizontally to release the fixing, and then can move the lever to another place and fix it....*

Claim 2 is a method that is different with respect to the fixing method of support 1 wherein support 1 is fastened to the steering wheel 2 from the outside with a lever or a nut using a banned 11 or U-shaped metal fitting 12.

In the internal structure of support 1, molded part 8 is a light-weight plastic and relieves fatigue of a portion of the hands in contact with the cushion material thereon by covering the hands. A surface material 10 can be made with a cloth or with leather in order to reduce slippage of the hands as much as possible as shown in Fig. 3. *Support 1 does not come in contact with the body earlier than steering wheel 2 in a collision due to an accident happening in front of steering wheel 2; almost all of the parts are formed into curved surfaces and are covered all over with flexible cushion 9 when they are fixed to steering wheel 2. Therefore, the safety of the human body is thought to be high.* [Emphasis Added.]

Examiner provided an Appendix with the May 13, 2010 Office Action in which he marked up Figures 1, 2, and 4 of Shigeru to attempt to show the features of the present invention.¹⁸ The Examiner alleges that where support 1 is fixed to fixing groove 3 of the steering wheel equates to the first section of the present invention, and support 1 generally equates to the second section of the present invention.

Appellant contends that the marked-up figures along with this remainder of Shigeru clearly show this reference (1) teaches away from the present invention, and (2) does not teach or suggest the present invention for the same reasons the Board found in the Decision that the present invention was not anticipated by U.S. Patent No. 2,118,540 to Van Arsdel ("Van Arsdel") or U.S. Patent No. 1,575,828 to Laubach ("Laubach").¹⁹

Initially, it is noted in Figures 1 and 4 of Shigeru show that support 1 extends outward from the outer edge of the periphery of the steering wheel parallel to a plane across the face of the steering wheel and because support 1 is thicker than the steering wheel, a portion of support 1

¹⁸ Marked-up Figures 1, 2, and 4 of Shigeru are attached as Attachment L of the Evidence Appendix.

¹⁹ The Decision is attached as Attachment A to the Evidence Appendix.

protrudes behind a plane across the back of the steering wheel. For safety reasons, no portion of support 1 extends in front of a plane across the face the steering wheel. This is supported at pages 3-4 of the Shigeru translation, where it states:

Support 1 does not come into contact with the body earlier than steering wheel 2 in a collision due to an accident happening in front of the steering wheel 2; almost all of the parts are formed into curved surfaces and are covered all over with flexible cushion 9 when they are fixed to steering wheel 2. Therefore, the safety of the human body is thought to be high.

As demonstrated in the quotations above from Shigeru, support 1 extends outward in the plane of the steering wheel with a portion that protrudes behind that plane. Further, as a safety factor, support 1 never extends in front of the plane across the face of the steering wheel toward the driver. Therefore, noting these features of Shigeru, this reference teaches away from the present invention as claimed in independent claims 20 and 27 in which the fatigue relieving/preventing apparatus extends outward from the steering wheel toward the driver.

Claims 21-26 and 29 (now claim 39) depend from claim 20, and claim 28 depends from claim 27. Since claims 21-26 and 29 (now claim 39) depend from claim 20, each of these dependent claims includes all the features of claim 20. Further, since claim 28 depends from claim 27, it will include all the features of claim 27. Given this, Shigeru teaches away from claims 21-26 and 29 (now claim 39), and 28 for the same reasons that it teaches away from the independent claims from which each of these claims depends.

A review of Shigeru also supports that this reference does not teach or suggest at least the following feature of independent claims 20 and 27 of the present application:

the second section for providing resting support for at least a portion of a vehicular operator's body when pressure from the portion of the vehicular operator's body on the second section is less than the pressure for deforming the second section out of interference with the vehicular operator's ability to operate the steering wheel, and deforming out of interference with the vehicular operator's ability to operate the steering wheel when pressure from the portion of the vehicular operator's body on the second section is equal to or greater than the pressure for deforming the second section out of interference with the vehicular operator's ability to operate the steering wheel. [Emphasis added.]

As noted previously, Appellant submits that support 1 of Shigeru, although being constructed of a lightweight plastic, is a rigid structure that is locked or fixed to the steering wheel and is not "deformable out interference with vehicular operator's ability to operate the steering wheel" as set forth in claims 20 and 27.

Appellant's contention that molded part 8 of lightweight plastic is a rigid structure is supported by the translation. Figure 3 shows molded part 8 covered with cushion material 9 and cloth or leather covering 10 to reduce hand slippage. Molded part 8 also includes groove 7 into which lever 5 is inserted. Lever 5 and metal fitting 6 are connected by a connecting rod (Figure 6). Metal fitting 6 is disposed in groove 3 cut in the peripheral edge of the steering wheel for locking support 1 to the steering wheel.

When the driver fixes or locks molded part 8 to the steering wheel, the connecting rod between lever 5 and metal fitting 6 is disposed through the hole in molded part 8 that extends from groove 7 to the inside surface of molded part 8. In order to lock or fix molded part 8 to the steering wheel, there must be considerable fixing tension applied by lever 5 and metal fittings 6 to fix or lock support 1 to groove 3 in the steering wheel. If molded part 8 was not made of a rigid material as the Examiner contends, support 1 (1) would collapse under this fixing or locking tension and (2) would not be fixed or locked in place and only movable to a different location when the fixing or locking tension was removed. Further, the translation is explicit that in order to move support 1 from one place to another, it must be unfixed or unlocked, moved, and refixed or relocked to the steering wheel by operation of lever 5, metal fitting 6, and groove 3. As such, support 1 is a rigid structure covered with cushion material and cloth or leather.

Further evidence of support 1 having a rigid structure is that for safety reasons support 1 is positioned such that in an accident the driver would not impact support 1 before impacting the steering wheel. If support was not rigid as the Examiner contends, there would not be a need for such a safety risk precaution.

Appellant further submits, given the rigid structure of support 1 and its fixing or locking to the steering wheel by either (1) lever 5 with metal fitting 6 disposed in groove 3, or (2) a lever and band 11, or (3) a nut and U-shaped metal fitting 12, it is cumulative with Van Arsdel and Laubach, and, as such, independent claims 20 and 27 are patentable over Shigeru.

In reversing the Examiner's anticipation rejection under 35 USC §102 based on Van Arsdel and Laubach, the Board stated the following regarding these two references. First, with regard to Van Arsdel, the Board stated:

Van Arsdel

5. The Examiner finds from Van Arsdel's disclosure (page 1, right column at line 49 to page 2, left column at line 2 and at lines 28-32) that the grip-rest 2 is adjustable. Lines 28-32 explain that loosening or reversing the screw 14

sufficiently permits the grip-rest 2 to shift position. From this disclosure, the Examiner finds the grip-rest 2 could be placed at a position where it does not interfere with the operation of the steering wheel (*see* Ans. 9-10). As such, the Examiner finds that Van Arsdel's grip-rest 2 has the capability of deforming out of interference with the vehicular operator's body when the pressure from the vehicular operator's body is equal to or greater than the pressure needed to deform the second section out of interference.

6. The Appellant argues that the portion of Van Arsdel's disclosure that the Examiner is using (Van Arsdel, page 2, left column at lines 28-32) to find that an Arsdel's grip-rest 2 is deformable does not in fact support the Examiner's finding. Instead, this portion of Van Arsdel supports a finding that to move the grip-rest 2, the screw 14 must be loosened, the rest repositioned, and screw 14 tightened. The Appellant argues that this operation is not deforming according to claim 20 during normal use of the second section (grip-rest) (parenthetical nomenclature to Van Arsdel). The Appellant argues, instead, once positioned, the grip-rest is fixed. App. Br. 8.

(Decision, pp. 7-8)

Anticipation with Van Arsdel

We conclude that Appellant has met his burden in showing that Van Arsdel's second section is not capable of deforming out of interference with the vehicular operator's ability to operate the steering wheel when pressure from the portion of the vehicular operator's body on the second section is equal to or greater than the pressure for deforming the second section out of interference with the vehicular operator's ability to operate the steering wheel. *As the Appellant has stated, Van Arsdel's second section (grip rest) needs to be repositioned in order to be moved to a position out of interference with a driver's ability to steer the steering wheel (Fact 6) and parts of the second section (the flanges 4 and 5) give the driver something to push against to steer the car around corners and curves (Fact 7). A structure, as the Examiner has found, see Fact 5, that requires disassembly and reassembly and permits the driver to push against cannot reasonably be considered a structure that is capable of deforming out of interference as has been claimed.* Accordingly, Appellant has met his burden in showing that Van Arsdel's structure is not capable of the performing the deformation out of interference function claimed. Thus, Appellant has demonstrated error in the Examiner's rejection of claims 20-26 and 28/20. [Emphasis Added.]

(Decision, p. 13)

Now, with respect to Laubach, the Board stated:

11. The Examiner finds that portion 10 is capable of deforming out of interference because the driver can unscrew Laubach's knobs and move them to another position as desired by the driver. Ans. 12.
12. The Appellant argues that:

The description of the knobs and a review of the Figures... [make] plain that the knobs are not deformable and they are not disposed at an angle with respect to the plane across the face of the steering wheel. The knobs are rigidly connected to the steering wheel by screws 5. Any movement of them requires removing the screws, drilling the wheel at a new location, and reattaching the knobs at the new location. At this new location, the knobs will be in a plane parallel to the plane across the face of the steering wheel.

The knobs do not deform out of interference with the operation of the steering wheel as does the second section of claim 20. In fact, once the Laubach knobs are secured by screws 5 as shown and described, they are fixed and not movable during normal operations. If they are not unscrewed, the only movement would be to apply a destructive force to the knobs, thereby breaking them. Moreover, if the driver were to attempt to grab the steering wheel at the locations of the knobs in an emergency, the knobs would not deform and would prevent the driver from grabbing the wheel at these knob locations. Therefore, Laubach does not support a prima facie basis of anticipation because it is missing at least one element of claim 20 relating to deformation of the knobs out of interference with the operation of the steering wheel in the normal operation of the knobs. [Emphasis in original.]

See e.g., page 1, lines 43-71. App. Br. 11-12.
(Decision, pp. 10-11)

Anticipation with Laubach

We conclude that Appellant has met his burden in showing that *Laubach's second section does not inherently possess the characteristic of being capable of deforming out of interference with the vehicular operator's ability to operate the steering wheel* when pressure from the portion of the vehicular operator's body on the second section is equal to or greater than the pressure for deforming the second section out of interference with the vehicular operator's ability to operate the steering wheel. *As Appellant argues, in the manner in which the Examiner has utilized Laubach in order to reach the deforming out of interference function, the knobs need to be disassembled and reassembled in order to be repositioned. See Facts 11 and 12. We agree with Appellant that the disassembly and reassembly of the knobs demonstrates that the knobs are fixed and the only manner of movement to the knobs, short of disassembly, would be destructive in nature to Laubach's device.* As such, to find that the functional limitation of the second section deforming out of interference, as set forth in claim 20, is inherently satisfied on a manner of movement that either requires disassembly and reassembly or is destructive is unreasonable. Accordingly, the Appellant has met his burden in showing that Laubach does not possess the capability of deforming as set forth in claim 20. Thus, Appellant has demonstrated error in the Examiner's rejection of claims 20, 27, 28/20, and 28/27. [Emphasis Added.]

(Decision, pp. 15-16)

In the citations to the Decision above, it is plain that a structure in which a rigid support is fixed or locked to the steering wheel and can only be repositioned by unfixing or unlocking the rigid structure and then refixing or relocking it at a different location does not anticipate claims 20 and 27 of the present invention. Appellant submits that Shigeru is like Van Arsdel and Laubach in this regard and, therefore, does not anticipate claims 20 and 27.

For convenience, Appellant again provides the following portion of the Shigeru translation (Shigeru, pp. 2-4):

II. Scope of the Patent Claims

1. An invention of support 1 wherein *support 1 can be moved along a fixing groove of steering wheel 2 and fixed to a free place by the action of lever 5 and metal fitting 6 to make the hands stable by fixing support 1 to the outer periphery of steering wheel 2* and reduce fatigue of driver's hands.

2. A support 1 [is] fixed to steering wheel 2 with band 11 or U-shaped metal fitting 12 wherein a fixing groove 3 of the steering wheel is not needed to fasten support 1 from the outside of steering wheel 2.

III. Detailed Description of the Invention

Groove 3 for metal fitting 6 is cut in a conventional steering wheel, *metal fitting 6 of support 1 is fit into it in order to slide support 1 along the outer periphery of the steering wheel, and lever 5 is set into groove 7 of the support at the most preferable position of the driver's hands. When a driver wants to change the position, he/she can pull lever 5 horizontally to release the fixing, and then can move the lever to another place and fix it. When the driver thinks that the change is unnecessary, he/she draws the lever 5 to the upper part of steering wheel 2 having a metal fitting inlet/outlet 4 to make it possible to freely remove the metal fitting.*

Claim 2 is a method that is different with respect to the fixing method of support 1 wherein support 1 is fastened to the steering wheel 2 from the outside with a lever or a nut using a banned 11 or U-shaped metal fitting 12.

In the internal structure of support 1, molded part 8 is a light-weight plastic and relieves fatigue of a portion of the hands in contact with the cushion material thereon by covering the hands. A surface material 10 can be made with a cloth or with leather in order to reduce slippage of the hands as much as possible as shown in Fig. 3. *Support 1 does not come in contact with the body earlier than steering wheel 2 in a collision due to an accident happening in front of steering wheel 2; almost all of the parts are formed into curved surfaces and are covered all over with flexible cushion 9 when they are fixed to steering wheel 2. Therefore, the safety of the human body is thought to be high.* [Emphasis Added.]

The rigid support structure and method of moving it as disclosed in Shigeru are exactly what the Board has held is not "deforming out of interference with the vehicular operator's

ability to operate the steering wheel when pressure from the portion of the vehicular operator's body on the second section is equal to or greater than the pressure for deforming the second section out of interference with the vehicular operator's ability to operate the steering wheel" according to claims 20 and 27 of the present invention in its holding that neither Van Arsdell nor Laubach anticipates these claims. Accordingly, it is improper for the Examiner to disregard the Board's explicit prior holding on this issue.

Noting the foregoing, Appellant has provided at least two grounds that clearly show Shigeru does not anticipate independent claims 20 and 27 of the present application. The first is Shigeru teaches away from the invention of claims 20 and 27, and the second is Shigeru does not anticipate claims 20 and 27 for the same reasons that the Board found Van Arsdell and Laubach do not anticipate these claims.

Claims 21-26 and 29 (now claim 39) depend from claim 20, and claim 28 depends from claim 27. Since claims 21-26 and 29 depend from claim 20, each of these dependent claims includes all the features of claim 20. Further, since claim 28 depends from claim 27, it will include all the features of claim 27. Given this, Shigeru fails to anticipate claims 21-26 and 28 for the same reasons that it fails to anticipate the independent claims from which each of these dependent claims depends.

Appellant's positions above make plain that he has traversed the Examiner's anticipation rejection raised against claims 20-28 and 29 (now claim 39) based on Shigeru, and Appellant requests that this rejection be reversed.

B. Obviousness-Type Double Patenting Rejection is Improper

The Examiner has rejected claims 20-26 under the judicially-created doctrine of obviousness-type double patenting based on claims 14-17, 24, and 27 of the '306 Application (co-pending with the present application), and rejected claims 27 and 28 under the judicially-created doctrine of obviousness-type double patenting based on claims 18 and 19/18 of the '306 Application (co-pending with the present application). Appellant submits these rejections should be reversed given Appellant has filed a Terminal Disclaimer in the '306 Application based on the present application.

According to the Manual of Patent Examining Procedures ("MPEP"), it is proper for an Examiner to reject claims of a pending patent application under the judicially-created doctrine of

obviousness-type double patenting when the following conditions are found with respect to two co-pending applications:

1. Nonstatutory Double Patenting Rejections

If a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

If “provisional” ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue. If both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer.

MPEP 804.I.B.1.

The provisions of the MPEP cited above and cited by the Examiner in the May 13, 2010 Office Action to support his obviousness-type double patenting rejection are directed to situations in which a terminal disclaimer has not been filed and accepted by the Examiner in one of the applications. Since the Examiner has accepted the Terminal Disclaimer in the ‘306 Application based on the present application, the Examiner’s obviousness-type double patenting rejection is traversed and should be reversed.

The Examiner of record in the present application on appeal also is the Examiner of record in the co-pending ‘306 Application, which is concurrently on a second appeal. In the prosecution of the ‘306 Application, the Examiner raised an obviousness-type double patenting rejection against the claims of the ‘306 Application based on the claims of the present application and Appellant filed a Terminal Disclaimer²⁰ to overcome this rejection. As such, Appellant submits that in light of filing and acceptance of the Terminal Disclaimer in the

²⁰ A copy of the Terminal Disclaimer that has been filed and accepted in the ‘306 application is attached at Attachment M to the Evidence Appendix.

'306 Application, the Examiner's obviousness-type double patenting rejection in the present application is improper and should be reversed.

In the May 17, 2010 Interview, when the Undersigned queried the Examiner about the obviousness-type rejections advanced in the present application, the fact that the Terminal Disclaimer had been filed and accepted in the '306 Application was acknowledged by the Examiner. The Undersigned also queried what the ultimate result would be if a terminal disclaimer was filed in the present application directed to the '306 Application, and both the present application and the '306 Application should issue as patents. The Examiner responded that each patent would indicate it was subject to a terminal disclaimer, i.e., (1) the patent issuing from the present application would indicate a terminal disclaimer naming the '306 Application and (2) the patent issuing from the '306 Application would indicate a terminal disclaimer naming the present application. The Undersigned indicated to the Examiner that he believed this would be improper; however, the Examiner pointed to MPEP §804, subsection I.B.1. as supporting his position. Appellant submits that following MPEP §804, subsection I.B.1., the filing of the Terminal Disclaimer in the '306 Application overcomes any need to raise an obviousness-type double patenting rejection in the present application based on the '306 Application.

Appellant believes that the second paragraph of MPEP §804, subsection I.B.1. would apply to the present application and the co-pending '306 Application before the filing of a terminal disclaimer in one of the two applications. The second paragraph of MPEP §804, subsection I.B.1. states:

If "provisional" ODP rejections in two applications are the only rejections remaining in those applications, *the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue.* If both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer. [Emphasis added.]

Under present facts, the present application was filed on November 24, 2003 and the '306 Application, which is a continuation-in-part application of the present application, was filed on December 3, 2003. This makes the present application the earlier-filed application and the

'306 Application the later-filed application. In the '306 Application, the Examiner raised an obviousness-type double patenting rejection in view of the claims of the present application. To overcome that rejection, Appellant filed a Terminal Disclaimer (Attachment M to the Evidence Appendix), which the Examiner has acknowledged traversed that obviousness double patenting rejection in the '306 Application and that rejection was withdrawn.

MPEP §804, subsection I.B.1. addresses the situation in which there are obviousness-type double patenting rejections in two applications with no terminal disclaimer being filed. However, under the present facts, the obviousness-type double patenting rejection in the '306 Application has been overcome by the filing of the Terminal Disclaimer. This satisfies the requirement of the second paragraph of MPEP §804, subsection I.B.1. quoted above and makes it improper to raise an obviousness-type double patenting rejection in the present application, which is the earlier-filed application.

Noting the foregoing, Appellant has traversed the Examiner's obviousness-type double patenting rejection as it has been applied to the present application and requests that it be reversed.

VIII. Claims Appendix

1.-19. (Cancelled)

20. (Previously Amended) A fatigue relieving/preventing apparatus associated with a steering wheel for controlling a vehicle comprising:

a first section that connects to an upper one-half (1/2) of a peripheral portion of the steering wheel; and

a second section that connects to, and extends from, the first section at the peripheral portion of the steering wheel, the second section extends from the first section outward at an angle to a plane across a face to the steering wheel, the second section for providing resting support for at least a portion of a vehicular operator's body when pressure from the portion of the vehicular operator's body on the second section is less than the pressure for deforming the second section out of interference with the vehicular operator's ability to operate the steering wheel, and deforming out of interference with the vehicular operator's ability to operate the steering wheel when pressure from the portion of the vehicular operator's body on the second section is equal to or greater than the pressure for deforming the second section out of interference with the vehicular operator's ability to operate the steering wheel.

21. (Original) The apparatus as recited in claim 20, wherein the second section is deformable in at least one direction when deforming pressure is applied to such second section.

22. (Previously Amended) The apparatus as recited in claim 20, wherein the second section provides resting support for a portion of the vehicular operator's body when resting support pressure from such body portion is applied in at least one direction.

23. (Original) The apparatus as recited in claim 20, wherein the steering wheel includes a steering wheel for controlling at least a nautical vessel, an aircraft, or a ground transportation vehicle.

24. (Original) The apparatus as recited in claim 20, wherein the second section will return to an original first position after deforming pressure is removed therefrom.

25. (Original) The apparatus as recited in claim 20, wherein the portion of the body supported by the second section includes at least a forearm, wrist, or hand.

26. (Original) The apparatus as recited in claim 20, wherein the first section extends a length of a predetermined peripheral portion of the steering wheel.

27. (Previously Amended) A fatigue relieving/preventing apparatus associated with a steering wheel for controlling a vehicle comprising:

at least a first first section and a second first section that connect to an upper one-half (1/2) of a peripheral portion of the steering wheel; and

at least a first second section and a second second section that connect to, and extends from the first and second first sections, respectively, with the first and second second sections extending from the respective first and second first sections outward at an angle to a plane across a face to the steering wheel, the first and second second sections each providing resting support for at least a portion of a vehicular operator's body when pressure from the portion of the vehicular operator's body on the first or second second section is less than the pressure for deforming the first or second second section out of interference with the vehicular operator's ability to operate the steering wheel, and deforming out of interference with the vehicular operator's ability to operate the steering wheel when pressure from the portion of the vehicular operator's body on the first or second second section is equal to or greater than the pressure for deforming the first or second second section out of interference with the vehicular operator's ability to operate the steering wheel.

28. (Previously Amended) The apparatus as recited in claim 27, wherein the first and second first sections are deformable.

29.-38. (Cancelled)

39. (New) The apparatus as recited in claim 20, wherein the first section is deformable.

IX. Evidence Appendix

Attachment A is a copy of the Board decision dated August 31, 2009.

Attachment B is a copy of the September 24, 2009 Amendment.

Attachment C is a copy of the Oral Hearing Transcript dated August 13, 2009.

Attachment D is a copy of the November 20, 2009 Office Action.

Attachment E is a copy of the February 24, 2010 Amendment.

Attachment F is a copy of the May 13, 2010 Office Action.

Attachment G is a copy of the May 20, 2010 Amendment.

Attachment H is a copy of the May 27, 2010 Advisory Action.

Attachment I is a copy of the June 7, 2010 Amendment.

Attachment J is a copy of the June 14, 2010 Advisory Action.

Attachment K is a copy of U.S. Publication No. 2004/0129108.

Attachment L is a copy of Marked-up Figures 1, 2, and 4 of Shigeru.

Attachment M is a copy of the Terminal Disclaimer in the '306 Application.

X. Related Proceedings Appendix

None.

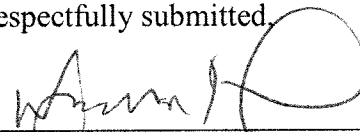
XI. Conclusion

In the foregoing, Appellant has clearly demonstrated that each of the Examiner's bases for the rejection of claims 20-28 and 29 (now claim 39) under 35 U.S.C. §102 for allegedly being anticipated by Shigeru and the rejections of the claims under the judicially-created doctrine of obviousness-type double patenting in view of the claims of the '306 Application are traversed. Accordingly, Appellant requests that these rejections be reversed by the Board.

The appropriate fee for the Appeal Brief is being paid herewith via credit card. Appellant believes no other fee is due with this Appeal Brief. However, if a fee is due or to credit any overpayment, please charge or credit our Deposit Account No. 08-0219, under Order No. 114089.120US2 from which the undersigned is authorized to draw.

Dated: June 18, 2010

Respectfully submitted,



Wayne M. Kennard
Registration No.: 30,271
Attorney for Appellant

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
(617) 526-6000 (telephone)
(617) 526-5000 (facsimile)